

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACY LEE JONES,

Defendant-Appellant.

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UNPUBLISHED

February 8, 2007

No. 266377

Genesee Circuit Court

LC No. 05-016528-FH

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

A jury convicted defendant of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), maintaining a drug vehicle, MCL 333.7405(d), and possession of marijuana, MCL 333.7403(2)(d). The court sentenced defendant as an habitual offender, second offense, MCL 768.10, to concurrent prison terms of 24 months to 40 years for the delivery conviction and 365 days for each of the remaining convictions. Defendant appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion by denying his request for a continuance on the day of trial to allow defense counsel to investigate and secure defendant's witnesses.

This Court reviews a trial court's decision concerning a request for a continuance for an abuse of discretion. *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002); *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). A request for a continuance must be based on good cause. *Id.* at 18. "'Good cause' factors include 'whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments.'" *Id.* Where the request is made on the ground of unavailability of a witness or evidence, a defendant must also show due diligence in making efforts to produce the witness or evidence. *Id.* The denial of a request is not grounds for reversal of a conviction unless the defendant demonstrates prejudice resulting from the court's decision. *Id.* at 18-19.

The trial court did not abuse its discretion by denying defendant's request to adjourn the trial because the request was not supported by good cause. The defense failed to avail itself of the opportunity to secure the presence of the witnesses, did not show that the witnesses' testimony was relevant to the defense, and had obtained a prior adjournment for essentially the same purpose. Moreover, defendant has not shown that the denial of the request was prejudicial.

There is no indication, much less substantiation, that the witnesses would have offered relevant, exculpatory testimony.

Defendant next argues that the trial court erred by allowing the prosecution to present Sgt. Coon and Lt. Green as rebuttal witnesses because the testimony was not “properly responsive” to evidence introduced by the defense.

Because defendant did not object to Sgt. Coon’s testimony, we review that testimony for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999). Defendant objected to Lt. Green’s testimony concerning the money used in the controlled buy on the basis that it was “beyond the scope of re-direct.” Although the ground for the objection was not well stated, we will treat the issue as preserved and review the trial court’s ruling for an abuse of discretion. *People v Figures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

Rebuttal evidence is admissible to contradict evidence presented by the defense. *Id.* Whether it is properly admitted depends on whether it is responsive to evidence or a theory developed by the defense, not whether the evidence could have been offered during the prosecution’s case in chief. *Id.*

The trial court did not err in admitting the rebuttal evidence. Sgt. Coons testified that on July 9, 2004, he observed defendant and Sgt. Tucker appearing to converse at the scene where Tucker had testified that the first transaction occurred. This was responsive to defendant’s testimony that he was not present at that location on that date. Sgt. Coons also testified that he was part of the arrest team on July 22, 2004, and saw defendant already in custody when he arrived. Although this part of Sgt. Coon’s account does not appear to be responsive to defense testimony, this testimony was cumulative of other evidence and, therefore, did not affect defendant’s substantial rights. Lt. Green testified that he provided Sgt. Tucker with approximately \$2,000 for use in the July 22, 2004, controlled buy and then saw the police retrieve it from defendant at the time of his arrest. This testimony contradicted defendant’s denial of involvement in the drug transactions and was proper rebuttal evidence.

Affirmed.

/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald  
/s/ Pat M. Donofrio